

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HENRY JOHN HOLMES,
Petitioner,
vs.
MAURICE JUNIOUS, Warden,
Respondent.

CASE NO. ED CV 10-00563 AHM (RZ)
ORDER SUMMARILY DISMISSING
PETITION

The Court will dismiss this habeas action summarily because its sole claim, that the trial court erred in refusing to suppress certain evidence, is barred by the doctrine of *Stone v. Powell*, as discussed below.


Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified."

Here, Petitioner raises only one claim. He asserts that, based on the Fourth Amendment, the trial court should have granted his motion to suppress evidence. The California Court of Appeal and the California Supreme Court rejected relief on direct review, and Petitioner now turns to this Court for habeas relief. But Fourth Amendment claims are not cognizable in federal habeas proceedings if a petitioner has had full and fair

1 opportunity to litigate them in state court. *Stone v. Powell*, 428 U.S. 465, 481-82, 96 S.Ct.
2 3037, 3046-47, 49 L.Ed.2d 1067 (1976). Petitioner had a motion hearing at trial, and the
3 state appellate court rejected the same claim in a reasoned decision. There is thus no
4 indication that Petitioner's case deviated from the general rule whereby California indeed
5 accords a "full and fair opportunity" to litigate Fourth Amendment claims. *See Gordon*
6 *v. Duran*, 895 F.2d 610, 613-14 (9th Cir.1990); *see also* CAL. PENAL CODE § 1538.5
7 (providing mechanism for litigating Fourth Amendment claims).

8 Accordingly, the Petition is DISMISSED WITH PREJUDICE.

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10 DATED: April 22, 2010

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13 A. HOWARD MATZ
14 UNITED STATES DISTRICT JUDGE

15 Presented By:

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18 RALPH ZAREFSKY
19 UNITED STATES MAGISTRATE JUDGE
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